



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB1645

Introduced 2/13/2013, by Sen. Kwame Raoul

SYNOPSIS AS INTRODUCED:

720 ILCS 5/11-0.1

720 ILCS 5/11-14

730 ILCS 5/5-5-3.1

from Ch. 38, par. 11-14

from Ch. 38, par. 1005-5-3.1

Amends the Criminal Code of 2012. Defines "crime of violence" in the Sex Offenses Article of the Code. Provides that any person who, in good faith, contacts law enforcement or emergency medical services under Emergency Medical Services (EMS) Systems Act to report that he or she is a victim of a crime of violence has personally observed another person subjected to a crime of violence, shall not be subject to arrest, charge, or prosecution for prostitution if the evidence for the arrest, charge, or prosecution was gained as a result of the person contacting law enforcement or emergency medical services to report the crime of violence. Provides that it is an affirmative defense to a prostitution offense that the defendant engaged in or performed prostitution as a result of being a victim of involuntary servitude or trafficking in persons. Provides that Amends the Unified Code of Corrections. Provides that it is a mitigating factor in sentencing that the defendant contacted law enforcement or emergency medical services to report that he or she was a victim of a crime of violence or personally observed another person subjected to a crime of violence, and was convicted of prostitution. Provides that it is an affirmative defense to a prostitution offense that the defendant engaged in or performed prostitution as a result of being a victim of involuntary servitude or trafficking in persons. Effective immediately.

LRB098 08866 RLC 38996 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 2012 is amended by changing
5 Sections 11-0.1 and 11-14 as follows:

6 (720 ILCS 5/11-0.1)

7 Sec. 11-0.1. Definitions. In this Article, unless the
8 context clearly requires otherwise, the following terms are
9 defined as indicated:

10 "Accused" means a person accused of an offense prohibited
11 by Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of
12 this Code or a person for whose conduct the accused is legally
13 responsible under Article 5 of this Code.

14 "Adult obscenity or child pornography Internet site". See
15 Section 11-23.

16 "Advance prostitution" means:

17 (1) Soliciting for a prostitute by performing any of
18 the following acts when acting other than as a prostitute
19 or a patron of a prostitute:

20 (A) Soliciting another for the purpose of
21 prostitution.

22 (B) Arranging or offering to arrange a meeting of
23 persons for the purpose of prostitution.

1 (C) Directing another to a place knowing the
2 direction is for the purpose of prostitution.

3 (2) Keeping a place of prostitution by controlling or
4 exercising control over the use of any place that could
5 offer seclusion or shelter for the practice of prostitution
6 and performing any of the following acts when acting other
7 than as a prostitute or a patron of a prostitute:

8 (A) Knowingly granting or permitting the use of the
9 place for the purpose of prostitution.

10 (B) Granting or permitting the use of the place
11 under circumstances from which he or she could
12 reasonably know that the place is used or is to be used
13 for purposes of prostitution.

14 (C) Permitting the continued use of the place after
15 becoming aware of facts or circumstances from which he
16 or she should reasonably know that the place is being
17 used for purposes of prostitution.

18 "Agency". See Section 11-9.5.

19 "Arranges". See Section 11-6.5.

20 "Bodily harm" means physical harm, and includes, but is not
21 limited to, sexually transmitted disease, pregnancy, and
22 impotence.

23 "Care and custody". See Section 11-9.5.

24 "Child care institution". See Section 11-9.3.

25 "Child pornography". See Section 11-20.1.

26 "Child sex offender". See Section 11-9.3.

1 "Community agency". See Section 11-9.5.

2 "Conditional release". See Section 11-9.2.

3 "Consent". See Section 11-1.70.

4 "Crime of violence" means and includes any offense defined
5 in Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, 10-1, 10-2,
6 10-9, 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-11,
7 11-14.3, 11-14.4, 11-20.1, 12-1, 12-2, 12-3, 12-3.1, 12-3.2,
8 12-3.3, 12-3.4, 12-5, 12-7.1, 12-7.3, 12-7.4, 12-20.5, 20-1, or
9 20-1.1, or Section 12-3.05 except for subdivision (a)(4) or
10 (g)(1) of this Code, Sections 1(a) and 1(a-5) of the Cemetery
11 Protection Act, Section 125 of the Stalking No Contact Order
12 Act, Section 219 of the Civil No Contact Order Act, driving
13 under the influence as defined in Section 11-501 of the
14 Illinois Vehicle Code, a violation of Section 11-401 of the
15 Illinois Vehicle Code, provided the victim was a pedestrian or
16 was operating a vehicle moved solely by human power or a
17 mobility device at the time of contact, and a violation of
18 Section 11-204.1 of the Illinois Vehicle Code; so long as the
19 offense did not occur during a civil riot, insurrection or
20 rebellion. "Crime of violence" does not include any other
21 offense or accident involving a motor vehicle except those
22 vehicle offenses specifically provided for in this paragraph.
23 "Crime of violence" does include all of the offenses
24 specifically provided for in this paragraph that occur within
25 this State but are subject to federal jurisdiction and crimes
26 involving terrorism as defined in 18 U.S.C. 2331.

1 "Custody". See Section 11-9.2.

2 "Day care center". See Section 11-9.3.

3 "Depict by computer". See Section 11-20.1.

4 "Depiction by computer". See Section 11-20.1.

5 "Disseminate". See Section 11-20.1.

6 "Distribute". See Section 11-21.

7 "Family member" means a parent, grandparent, child, aunt,
8 uncle, great-aunt, or great-uncle, whether by whole blood,
9 half-blood, or adoption, and includes a step-grandparent,
10 step-parent, or step-child. "Family member" also means, if the
11 victim is a child under 18 years of age, an accused who has
12 resided in the household with the child continuously for at
13 least 6 months.

14 "Force or threat of force" means the use of force or
15 violence or the threat of force or violence, including, but not
16 limited to, the following situations:

17 (1) when the accused threatens to use force or violence
18 on the victim or on any other person, and the victim under
19 the circumstances reasonably believes that the accused has
20 the ability to execute that threat; or

21 (2) when the accused overcomes the victim by use of
22 superior strength or size, physical restraint, or physical
23 confinement.

24 "Harmful to minors". See Section 11-21.

25 "Loiter". See Section 9.3.

26 "Material". See Section 11-21.

1 "Minor". See Section 11-21.

2 "Nudity". See Section 11-21.

3 "Obscene". See Section 11-20.

4 "Part day child care facility". See Section 11-9.3.

5 "Penal system". See Section 11-9.2.

6 "Person responsible for the child's welfare". See Section
7 11-9.1A.

8 "Person with a disability". See Section 11-9.5.

9 "Playground". See Section 11-9.3.

10 "Probation officer". See Section 11-9.2.

11 "Produce". See Section 11-20.1.

12 "Profit from prostitution" means, when acting other than as
13 a prostitute, to receive anything of value for personally
14 rendered prostitution services or to receive anything of value
15 from a prostitute, if the thing received is not for lawful
16 consideration and the person knows it was earned in whole or in
17 part from the practice of prostitution.

18 "Public park". See Section 11-9.3.

19 "Public place". See Section 11-30.

20 "Reproduce". See Section 11-20.1.

21 "Sado-masochistic abuse". See Section 11-21.

22 "School". See Section 11-9.3.

23 "School official". See Section 11-9.3.

24 "Sexual abuse". See Section 11-9.1A.

25 "Sexual act". See Section 11-9.1.

26 "Sexual conduct" means any knowing touching or fondling by

1 the victim or the accused, either directly or through clothing,
2 of the sex organs, anus, or breast of the victim or the
3 accused, or any part of the body of a child under 13 years of
4 age, or any transfer or transmission of semen by the accused
5 upon any part of the clothed or unclothed body of the victim,
6 for the purpose of sexual gratification or arousal of the
7 victim or the accused.

8 "Sexual excitement". See Section 11-21.

9 "Sexual penetration" means any contact, however slight,
10 between the sex organ or anus of one person and an object or
11 the sex organ, mouth, or anus of another person, or any
12 intrusion, however slight, of any part of the body of one
13 person or of any animal or object into the sex organ or anus of
14 another person, including, but not limited to, cunnilingus,
15 fellatio, or anal penetration. Evidence of emission of semen is
16 not required to prove sexual penetration.

17 "Solicit". See Section 11-6.

18 "State-operated facility". See Section 11-9.5.

19 "Supervising officer". See Section 11-9.2.

20 "Surveillance agent". See Section 11-9.2.

21 "Treatment and detention facility". See Section 11-9.2.

22 "Victim" means a person alleging to have been subjected to
23 an offense prohibited by Section 11-1.20, 11-1.30, 11-1.40,
24 11-1.50, or 11-1.60 of this Code.

25 (Source: P.A. 96-1551, eff. 7-1-11.)

1 (720 ILCS 5/11-14) (from Ch. 38, par. 11-14)

2 Sec. 11-14. Prostitution.

3 (a) Any person who knowingly performs, offers or agrees to
4 perform any act of sexual penetration as defined in Section
5 11-0.1 of this Code for anything of value, or any touching or
6 fondling of the sex organs of one person by another person, for
7 anything of value, for the purpose of sexual arousal or
8 gratification commits an act of prostitution.

9 (a-5) It is an affirmative defense to a prostitution
10 offense under this Section, that the defendant engaged in or
11 performed prostitution as a result of being a victim of
12 involuntary servitude or trafficking in persons under Section
13 10-9 of this Code.

14 (b) Sentence.

15 A violation of this Section is a Class A misdemeanor,
16 unless committed within 1,000 feet of real property comprising
17 a school, in which case it is a Class 4 felony. A second or
18 subsequent violation of this Section, or any combination of
19 convictions under this Section and Section 11-14.1
20 (solicitation of a sexual act), 11-14.3 (promoting
21 prostitution), 11-14.4 (promoting juvenile prostitution),
22 11-15 (soliciting for a prostitute), 11-15.1 (soliciting for a
23 juvenile prostitute), 11-16 (pandering), 11-17 (keeping a
24 place of prostitution), 11-17.1 (keeping a place of juvenile
25 prostitution), 11-18 (patronizing a prostitute), 11-18.1
26 (patronizing a juvenile prostitute), 11-19 (pimping), 11-19.1

1 (juvenile pimping or aggravated juvenile pimping), or 11-19.2
2 (exploitation of a child), is a Class 4 felony.

3 (c) First offender; felony prostitution.

4 (1) Whenever any person who has not previously been
5 convicted of or placed on probation for felony prostitution
6 or any law of the United States or of any other state
7 relating to felony prostitution pleads guilty to or is
8 found guilty of felony prostitution, the court, without
9 entering a judgment and with the consent of such person,
10 may sentence the person to probation.

11 (2) When a person is placed on probation, the court
12 shall enter an order specifying a period of probation of 24
13 months and shall defer further proceedings in the case
14 until the conclusion of the period or until the filing of a
15 petition alleging violation of a term or condition of
16 probation.

17 (3) The conditions of probation shall be that the
18 person: (i) not violate any criminal statute of any
19 jurisdiction; (ii) refrain from possessing a firearm or
20 other dangerous weapon; (iii) submit to periodic drug
21 testing at a time and in a manner as ordered by the court,
22 but no less than 3 times during the period of the
23 probation, with the cost of the testing to be paid by the
24 probationer; and (iv) perform no less than 30 hours of
25 community service, provided community service is available
26 in the jurisdiction and is funded and approved by the

1 county board.

2 (4) The court may, in addition to other conditions,
3 require that the person:

4 (A) make a report to and appear in person before or
5 participate with the court or such courts, person, or
6 social service agency as directed by the court in the
7 order of probation;

8 (B) pay a fine and costs;

9 (C) work or pursue a course of study or vocational
10 training;

11 (D) undergo medical or psychiatric treatment; or
12 treatment or rehabilitation by a provider approved by
13 the Illinois Department of Human Services;

14 (E) attend or reside in a facility established for
15 the instruction or residence of defendants on
16 probation;

17 (F) support his or her dependents;

18 (G) refrain from having in his or her body the
19 presence of any illicit drug prohibited by the Cannabis
20 Control Act or the Illinois Controlled Substances Act,
21 unless prescribed by a physician, and submit samples of
22 his or her blood or urine or both for tests to
23 determine the presence of any illicit drug.

24 (5) Upon violation of a term or condition of probation,
25 the court may enter a judgment on its original finding of
26 guilt and proceed as otherwise provided.

1 (6) Upon fulfillment of the terms and conditions of
2 probation, the court shall discharge the person and dismiss
3 the proceedings against him or her.

4 (7) A disposition of probation is considered to be a
5 conviction for the purposes of imposing the conditions of
6 probation and for appeal, however, discharge and dismissal
7 under this subsection is not a conviction for purposes of
8 this Code or for purposes of disqualifications or
9 disabilities imposed by law upon conviction of a crime.

10 (8) There may be only one discharge and dismissal under
11 this Section, Section 410 of the Illinois Controlled
12 Substances Act, Section 70 of the Methamphetamine Control
13 and Community Protection Act, Section 10 of the Cannabis
14 Control Act, or Section 5-6-3.3 of the Unified Code of
15 Corrections.

16 (9) If a person is convicted of prostitution within 5
17 years subsequent to a discharge and dismissal under this
18 subsection, the discharge and dismissal under this
19 subsection shall be admissible in the sentencing
20 proceeding for that conviction as evidence in aggravation.

21 (d) Notwithstanding the foregoing, if it is determined,
22 after a reasonable detention for investigative purposes, that a
23 person suspected of or charged with a violation of this Section
24 is a person under the age of 18, that person shall be immune
25 from prosecution for a prostitution offense under this Section,
26 and shall be subject to the temporary protective custody

1 provisions of Sections 2-5 and 2-6 of the Juvenile Court Act of
2 1987. Pursuant to the provisions of Section 2-6 of the Juvenile
3 Court Act of 1987, a law enforcement officer who takes a person
4 under 18 years of age into custody under this Section shall
5 immediately report an allegation of a violation of Section 10-9
6 of this Code to the Illinois Department of Children and Family
7 Services State Central Register, which shall commence an
8 initial investigation into child abuse or child neglect within
9 24 hours pursuant to Section 7.4 of the Abused and Neglected
10 Child Reporting Act.

11 (e) Limitation on liability for reporting a violent crime.

12 (1) Any person who, in good faith, contacts law
13 enforcement or emergency medical services under Emergency
14 Medical Services (EMS) Systems Act to report that he or she
15 is a victim of a crime of violence as defined in Section
16 11-0.1 of this Code has personally observed another person
17 subjected to a crime of violence, shall not be subject to
18 arrest, charge, or prosecution for prostitution under this
19 Section if the evidence for the arrest, charge, or
20 prosecution was gained as a result of the person contacting
21 law enforcement or emergency medical services to report the
22 crime of violence.

23 (2) Evidence of contacting law enforcement or
24 emergency medical services to report a crime of violence
25 shall be considered by the court as a mitigating factor,
26 whether or not presented by the parties, in any criminal

1 prosecution or sentencing for prostitution under this
2 Section if the evidence of the offense was obtained as a
3 result of the person contacting law enforcement or
4 emergency medical services to report the crime of violence.

5 (3) The limited immunity described in paragraph (1) of
6 this subsection (e) shall not be extended if law
7 enforcement has reasonable suspicion or probable cause to
8 detain, arrest, or search the person described in paragraph
9 (1) of this subsection (e) for criminal activity and the
10 reasonable suspicion or probable cause is based on
11 information obtained prior to or independent of the
12 individual described in paragraph (1) of this subsection
13 (e) contacting law enforcement or emergency medical
14 services to report a crime of violence and not obtained as
15 a direct result of contacting law enforcement or emergency
16 medical services to report the crime of violence. Nothing
17 in this subsection (e) is intended to interfere with or
18 prevent the investigation, arrest, or prosecution of any
19 person for prostitution, prostitution-related offenses, or
20 any other crime.

21 (Source: P.A. 96-1464, eff. 8-20-10; 96-1551, eff. 7-1-11;
22 97-1118, eff. 1-1-13.)

23 Section 10. The Unified Code of Corrections is amended by
24 changing Section 5-5-3.1 as follows:

1 (730 ILCS 5/5-5-3.1) (from Ch. 38, par. 1005-5-3.1)

2 Sec. 5-5-3.1. Factors in Mitigation.

3 (a) The following grounds shall be accorded weight in favor
4 of withholding or minimizing a sentence of imprisonment:

5 (1) The defendant's criminal conduct neither caused
6 nor threatened serious physical harm to another.

7 (2) The defendant did not contemplate that his criminal
8 conduct would cause or threaten serious physical harm to
9 another.

10 (3) The defendant acted under a strong provocation.

11 (4) There were substantial grounds tending to excuse or
12 justify the defendant's criminal conduct, though failing
13 to establish a defense.

14 (5) The defendant's criminal conduct was induced or
15 facilitated by someone other than the defendant.

16 (6) The defendant has compensated or will compensate
17 the victim of his criminal conduct for the damage or injury
18 that he sustained.

19 (7) The defendant has no history of prior delinquency
20 or criminal activity or has led a law-abiding life for a
21 substantial period of time before the commission of the
22 present crime.

23 (8) The defendant's criminal conduct was the result of
24 circumstances unlikely to recur.

25 (9) The character and attitudes of the defendant
26 indicate that he is unlikely to commit another crime.

1 (10) The defendant is particularly likely to comply
2 with the terms of a period of probation.

3 (11) The imprisonment of the defendant would entail
4 excessive hardship to his dependents.

5 (12) The imprisonment of the defendant would endanger
6 his or her medical condition.

7 (13) The defendant was intellectually disabled as
8 defined in Section 5-1-13 of this Code.

9 (14) The defendant sought or obtained emergency
10 medical assistance for an overdose and was convicted of a
11 Class 3 felony or higher possession, manufacture, or
12 delivery of a controlled, counterfeit, or look-alike
13 substance or a controlled substance analog under the
14 Illinois Controlled Substances Act or a Class 2 felony or
15 higher possession, manufacture or delivery of
16 methamphetamine under the Methamphetamine Control and
17 Community Protection Act.

18 (15) The defendant contacted law enforcement or
19 emergency medical services to report that he or she was a
20 victim of a crime of violence as defined in Section 11-0.1
21 of the Criminal Code of 2012 or personally observed another
22 person subjected to a crime of violence, and was convicted
23 of prostitution under Section 11-14 of the Criminal Code of
24 2012.

25 (b) If the court, having due regard for the character of
26 the offender, the nature and circumstances of the offense and

1 the public interest finds that a sentence of imprisonment is
2 the most appropriate disposition of the offender, or where
3 other provisions of this Code mandate the imprisonment of the
4 offender, the grounds listed in paragraph (a) of this
5 subsection shall be considered as factors in mitigation of the
6 term imposed.

7 (Source: P.A. 97-227, eff. 1-1-12; 97-678, eff. 6-1-12; revised
8 10-16-12.)

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.